

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
March 19, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, March 19, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

David Shapiro, Campaign Manager, Campaign Against Indiscriminate
Juvenile Shackling, National Juvenile Defender Center,
Washington, D.C.
Susan Roske, Chief Deputy Public Defender, Juvenile Division,
Office of the Clark County Public Defender
Michael Whelihan, Probation Manager, Department of Juvenile
Justice Services, Clark County
Regan Comis, representing M + R Strategic Services
Vanessa Spinazola, Legislative and Advocacy Director, American
Civil Liberties Union of Nevada
Karla Navarette, Intern, American Civil Liberties Union of Nevada
John T. Jones, representing the Nevada District Attorneys
Association
Sally Ramm, Elder Rights Attorney, Aging and Disability Services
Division, Department of Health and Human Services
Kristin Erickson, representing Nevada District Attorneys
Association
Jacob R. Harmon, Regional Director– Northern Nevada, Alzheimer's
Association
Michel Overton, Private Citizen, Sparks, Nevada
Chuck Callaway, Police Director, Office of Intergovernmental
Services, Las Vegas Metropolitan Police Department
Robert Roshak, Executive Director, Nevada Sheriffs' and
Chiefs' Association
Ernest E. Adler, Private Citizen, Carson City, Nevada
Eric Spratley, Lieutenant, Legislative Services, Washoe County
Sheriff's Office
Barry Gold, Director of Government Relations, AARP of Nevada
Rana Goodman, representing *The Vegas Voice* PAC
Julie Belshe, Private Citizen, Las Vegas, Nevada
Elizabeth Diana Indig, Private Citizen, Las Vegas, Nevada

Thomas Lenner, Private Citizen, Las Vegas, Nevada
Julie Butler, Division Administrator, General Services Division,
Department of Public Safety
Joseph Chronister, Chief of Police, City of North Las Vegas Police
Department
Carla Stone, Police Support System Supervisor, North Las Vegas
Police Department
Janine Hansen, representing Nevada Families Association

Chairman Hansen:

[The roll was taken and Committee protocol was explained.] We have a work session today and three bills on the agenda. We will begin our work session with Assembly Bill 7.

Assembly Bill 7: Limits the recovery of damages arising from a civil action relating to a motor vehicle accident under certain circumstances. (BDR 3-227)

Diane Thornton, Committee Policy Analyst:

In our work session today, we start with Assembly Bill 7, which limits recovery of damages arising from a civil action relating to a motor vehicle accident under certain circumstances. It is sponsored by Assemblyman Hickey and was heard in this Committee on March 4, 2015. There is a proposed amendment from Assemblyman Hickey. [Continued reading from the work session document ([Exhibit C](#)).]

Chairman Hansen:

I will entertain a motion to amend and do pass.

ASSEMBLYMAN GARDNER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 7.

ASSEMBLYMAN WHEELER SECONDED THE MOTION

Assemblyman Elliot T. Anderson:

I regret that I could not get there on this bill. There have been some discussions about an amendment to make a civil penalty deduction from the damages instead of just taking them away. I do not understand how this bill is going to encourage people to get insurance, because I do not think they are going to find out about it until their lawyers tell them they will not be able to claim damages. Although I agree that getting people insurance is a good goal, there are currently penalties for not having insurance under *Nevada Revised Statutes* (NRS) 485.187. For that reason, I will be voting no.

Assemblyman Ohrenschall:

I have to echo my colleague's comments. I think the goal of trying to make sure people are insured is a noble one. We have other avenues to do this. My concern about A.B. 7 is that I see it creating two different classes of victims just by the luck of the draw. Let us say that neither my neighbor nor I pay our car insurance one month. If I get hit by a drunk driver or bank robber, I would have extra protections compared to the neighbor who got hit by someone who was being negligent by texting and eating chips while driving. I do not think we want to create a law like that. There is a sign in the courthouse that says equal justice under law. I am really concerned that we are creating two classes of victims based on the luck of the draw.

Assemblyman Thompson:

I will be voting no as well. I echo what my colleagues have stated. I was hoping we would get some type of amendment because people need to have car insurance. I was just hoping we could work something out.

Assemblyman Nelson:

I will be voting no on this.

THE MOTION PASSED. (ASSEMBLYMEN ANDERSON, ARAUJO, DIAZ, NELSON, OHRENSCHALL, AND THOMPSON VOTED NO.)

Chairman Hansen:

Assemblyman Gardner, would you please handle the floor assignment? Up next is Assembly Bill 151.

Assembly Bill 151: Revises provisions relating to the adoption of children.
(BDR 11-757)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 151 revises revisions relating to the adoption of children. It was brought forward by Assemblymen Araujo and Benitez-Thompson. It was heard in Committee on February 26, 2015. There is a proposed amendment from Assemblyman Araujo. [Continued reading from work session document, ([Exhibit D](#)).]

Chairman Hansen:

Mr. Araujo, is the amendment considered a friendly amendment?

Assemblyman Araujo:

Yes, that is correct.

Chairman Hansen:

I will entertain a motion on A.B. 151.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 151.

ASSEMBLYMAN THOMPSON SECONDED THE MOTION.

Assemblywoman Diaz:

I would like to commend Assemblyman Araujo for making sure that this process for the children is accelerated so that they can move on with their lives.

THE MOTION PASSED UNANIMOUSLY.

Chairman Hansen:

Assemblyman Araujo, I will have you do the floor statement. We will now move on to Assembly Bill 153.

Assembly Bill 153: Revises various provisions related to sexually exploited children. (BDR 5-622)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 153 revises various provisions related to sexually exploited children. It was brought forward by Assemblymen Araujo, Diaz, and Hambrick. It was heard in Committee on March 3, 2015. There is a proposed amendment. [Continued reading from work session document, ([Exhibit E](#)).]

Chairman Hansen:

The amendment deals with the federal funding issues by shifting a section of the *Nevada Revised Statutes*. Is that correct Assemblyman Araujo?

Assemblyman Araujo:

That is correct.

Chairman Hansen:

At this time, I will entertain a motion on Assembly Bill 153.

ASSEMBLYMAN THOMPSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 153.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Hansen:

Assemblywoman Diaz, would you handle the floor statement on that? Last on the work session is Assembly Bill 160.

Assembly Bill 160: Makes various changes relating to courts. (BDR 1-453)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 160 makes various changes relating to courts. It is sponsored by Assemblyman Ellison, and it was heard in Committee on March 2, 2015. There is a proposed amendment. [Continued reading from work session document ([Exhibit F](#)).]

Chairman Hansen:

I will entertain a motion on Assembly Bill 160.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 160.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Hansen:

Mr. Wheeler will handle the floor statement on this one. The work session is completed, and we will now open the hearing on Assembly Bill 213.

Assembly Bill 213: Revises provisions regarding juvenile justice. (BDR 5-842)

Assemblyman James Ohrenschall, Assembly District No. 12:

Thank you very much for hearing Assembly Bill 213. During the last interim I had the pleasure of working with Assemblyman Frierson on the Legislative Committee on Child Welfare and Juvenile Justice. I also chaired the subcommittee known as the Legislative Committee on Child Welfare and Juvenile Justice's Task Force to Study Juvenile Justice Issues. It was a good fit for me because of my work as a deputy public defender who represents children in a juvenile delinquency court. There were many issues that came up which prompted bill draft requests from the Interim Committee. However, Assembly Bill 213 did not. That is the reason why I decided to carry it. There is an amendment ([Exhibit G](#)) in the Nevada Electronic Legislative Information System (NELIS). The amendment replaces the original text of A.B. 213. The original text had to do with housing of youth who are charged and the attempt to have them certified in the adult criminal system. While I still think that is a meritorious goal, and a goal this Legislature should look at, it appears

to be a very costly goal which we may not have funding for currently. I hope it will be looked at in the future.

The idea of replacing the original text of A.B. 213 is one that also has a lot of merit. It has to do with children who are arrested and charged in juvenile delinquency court and the policies of indiscriminate shackling. Currently, there is no uniform policy in Nevada in terms of whether a child should be shackled or not. Around the country there has been a tremendous movement in other jurisdictions to make sure that shackling of youth in court is not indiscriminate. This means that it can occur when there is a good reason such as safety, but it will not happen indiscriminately. I do not think that any of us would like to see our teenagers shackled in court. It would be shocking to us, and it would be shocking to them.

There is a great deal of research that discusses the development of children's brains and how situations affect them versus how the same situation affects adults. Experiences such as shackling will have long-lasting effects, and you will hear testimony about it today.

I have a brief video about shackling that I would like to show the Committee. I also have some expert testimony lined up here in Carson City and in Las Vegas. I will begin with the video ([Exhibit H](#)).

Although there were some technical difficulties with the video, if this video continued, what you would have seen were some very compelling stories from young people about their experiences having to be in shackles in court. At this time, I would like to turn it over to David Shapiro, followed by Susan Roske and students of the William S. Boyd School of Law Juvenile Justice Clinic located in Las Vegas.

David Shapiro, Campaign Manager, Campaign Against Indiscriminate Juvenile Shackling, National Juvenile Defender Center, Washington, D.C.:

Thank you for giving me the opportunity to speak today on A.B. 213. I will be submitting the National Juvenile Defender Center's position on the issue, as well as the Dispute Resolution Section of the American Bar Association which is in strong support of shackling reform. I have previously submitted a brief informational handout ([Exhibit I](#)). Additionally, you will find the written testimony of several medical professionals, including Dr. Donald Rosenblitt of North Carolina ([Exhibit J](#)), Dr. Eugene Griffin of Illinois ([Exhibit K](#)), Dr. Robert Bidwell, of Hawaii ([Exhibit L](#)), and Assistant Professor of Speech-Language Pathology Gwyneth Rost of the University of Massachusetts, Amherst ([Exhibit M](#)). [Continued reading from prepared statement, ([Exhibit N](#)).]

The idea that shackling can be indiscriminate means that any child in custody is going to be in shackles. We are not looking at whether they actually need to be, and that is a huge problem. I have been talking about just the general issues with shackling. Medical experts and psychologists testified such as the testimony of Dr. Donald Rosenblitt ([Exhibit J](#)). Research shows that when children think a process is fair, they are more likely to participate willingly in that process. When they are treated with fairness, and not indiscriminately shackled, they are more likely to comply with court instructions and more likely to have positive outcomes later in life.

Those are some of the reasons to think critically and carefully about the shackling practices in Nevada's courts and why we should support this bill. There have been recent draft updates to include some additional language which says that one of the criterion you can use to determine if restraints are necessary is to look at the nature and seriousness of the offense. That would become number 3 (d) in the proposed amendment ([Exhibit G](#)).

I would oppose the amendment because looking at the other factors to take into account, the offense is only alleged because of the presumption of innocence until proven guilty, just like in adult court. We need to look at actual safety and flight risks. The alleged offense might have a correlation but has nothing to do with it beyond what the other factors already state. The other factors listed would be perfectly suitable to make a determination of whether shackles are actually needed. When you bring in the offense to it, you add some issues of bias. For example, not only is this child being arrested but he is being put in shackles because of that offense. That really does change the way the judges look at children. Also, the children are less likely to communicate with the judges and attorneys if they are in shackles. For those reasons, please do pass this bill. It is a very important piece of legislation that will help children in Nevada, and it will have an immediate outcome with no drawbacks. I am happy to answer any questions that you may have.

Chairman Hansen:

Thank you, Mr. Shapiro. I will let you and the bill's sponsor work out the possible changes in the amendments. Is there anybody that would like to ask any questions at this time? Seeing no one, thank you for calling in, Mr. Shapiro.

Susan Roske, Chief Deputy Public Defender, Juvenile Division, Office of the Clark County Public Defender:

I am also an adjunct professor with the William S. Boyd School of Law at the University of Nevada, Las Vegas (UNLV), and I teach the Juvenile Justice Clinic's law students. Unfortunately, the law students who were preparing to present on this issue were unable to be here this morning. They would have loved to address this issue because this is an issue we have worked on in various clinics over the past few years.

Presently, Clark County does not indiscriminately shackle children in juvenile court. This practice ended about two years ago. For approximately 15 years, Clark County did practice the indiscriminate shackling of children for every single child that appeared in custody in juvenile court. This means they had leg irons around their ankles, a belly chain around their waist, and they were in handcuffs. This included children as young as 8 years old. Another professor and I, along with our law students, have been attacking this issue for years. We found allies on the advisory board for the clinical program at UNLV. We pressured our juvenile court judge to end this practice. We talked to different players in the system. The marshals finally stood up, claimed responsibility for shackling the children, and said that is the way it is going to be. We convinced our juvenile court judge to take a lead role in this. He consulted with Juvenile Justice and together they came up with a policy to stop this indiscriminate practice. Today, children are only brought in with belly chains and handcuffs if they present one of the factors listed in the proposed amendment ([Exhibit G](#)).

A few years ago, I received a call from the district attorney (DA) regarding a call she received from school police. They were arresting an 8-year-old boy for possession of a handgun. This cute little boy could not have been more than 4 feet tall and 60 pounds. He had brought his grandpa's gun to school to show his friends. Under the law, if a child is arrested for possession of a firearm, they must be detained before they are taken before a judge. Normally, this child would have to stay in juvenile detention overnight before going before a judge. However, the DA called a special hearing and Judge William Voy agreed to hear it that morning. I asked the judge to send the marshal to bring the boy from the holding cell so that the detention staff would not put him in leg irons and handcuffs. The judge sent his marshal to do that as to not traumatize this little boy. It was too late because there was a practice of indiscriminate shackling of every detained kid going to court. This little boy was put in these leg irons and belly chain, and shuffled into court. His mother was traumatized; it is shocking for families to see their children treated this way. You heard from Mr. Shapiro about how the children feel. They feel like they are animals and people view them as dangerous. They are humiliated and traumatized. I have seen for

myself the marks on the wrists from the tight handcuffs the kids are wearing. They fiddle with them during court. They concentrate more on the chain around their bellies and wrists than listening to what the judge is saying to them.

During the 77th Legislative Session, Assemblywoman Lucy Flores openly admitted she had a history with the juvenile justice system. I heard her talking once where she said that the experience of being shackled and shuffled into court was the absolute worst part of it. She felt humiliated and disgraced. I urge this body to adopt this amendment to A.B. 213. I think it is important that we have a statewide policy and that no future marshal or judge can change the practice in Clark County. We need this to be law.

Assemblywoman Fiore:

Is there a determining factor on who gets shackled and who does not? Is there a level of risk?

Susan Roske:

In some places in the state throughout the past, there has been indiscriminate shackling which means that every child detained is shackled. In Clark County, now that we have stopped that practice, Juvenile Justice follows a procedure to look at any past escape attempts, evidence of a plan to escape, or any credible threats of harm by the child to determine if shackling is required.

Chairman Hansen:

I am going to play devil's advocate for just a moment. You are talking about children about 16 or 17 years of age. Sometimes you will get a big buff boy who is not terribly intimidated by cops. I thought perhaps that sometimes one of the reasons we bring them into the court system is to teach them a lesson and maybe traumatize them a little bit so that they do not have a pleasurable experience.

Susan Roske:

That is totally ineffective. As Mr. Shapiro said, the children that are traumatized by this experience and feel like they are not being treated fairly will be less likely to listen and obey the court orders. The children who feel like they are being treated fairly are less likely to reoffend. Scared straight programs are totally ineffective and have an opposite impact. As was mentioned earlier, under the *U.S. Constitution*, adults cannot be shackled during trial, yet we shackle children. We have a statute in Nevada that prohibits the shackling of adults during trial and at sentencing but we shackle children. That is wrong.

Assemblywoman Wheeler:

I keep hearing that scared straight does not work. I am wondering, are there any studies to show what works and what does not work as far as reoffending?

Susan Roske:

I believe that Mr. Shapiro has shared that information with you ([Exhibit I](#)). Additionally, there are a number of studies reflected in the affidavits from the professionals that Mr. Shapiro has shared with this Committee ([Exhibit J](#)), ([Exhibit K](#)), ([Exhibit L](#)), and ([Exhibit M](#)).

Assemblyman Ohrenschall:

A lot of that documentation is already on NELIS. They do bear out to what Professor Roske is testifying to.

Chairman Hansen:

Although Clark County has stopped practicing indiscriminate shackling, you still allow a certain level of discrimination for reasonable reasons for certain people in that system. The idea that we would never shackle anybody is highly unreasonable, but to shackle every single person in every single instance seems unreasonable as well.

Susan Roske:

I agree completely. Thank you so much.

Assemblyman Ohrenschall:

I also want to clarify that the amendment does not ban or prohibit shackling. It prohibits indiscriminate shackling. When detention staff or the judge makes the decision, it certainly can happen. This bill does not aim to ban shackling but aims to make it rare.

Chairman Hansen:

I went over some of that with Ms. Comis at a recent meeting.

Assemblywoman Seaman:

Is it current law right now to petition the court and is it discriminatory?

Assemblyman Ohrenschall:

No, there is no statute in Nevada for this. What Professor Roske talked about is a policy in Clark County, but there is no uniform policy.

Assemblywoman Seaman:

You can petition the court, correct?

Assemblyman Ohrenschall:

An attorney can make an argument to a judge, but there is no statute on point.

Chairman Hansen:

What you are saying is that there is a policy in Clark County but it is not based on the *Nevada Revised Statutes* (NRS).

Assemblyman Ohrenschall:

That is correct. It only applies to Clark County and not any other jurisdiction. Since our technical difficulties seem to be resolved, I would like to continue the three-minute video. [Continued playing video ([Exhibit H](#)).]

Assemblyman O'Neill:

I would like some clarification. This bill says the shackling of juveniles is only for court proceedings and not for the time of arrest, yet the video talked about events when children were handcuffed and transported while being arrested.

Assemblyman Ohrenschall:

That is correct. It is only for court proceedings.

Assemblywoman Fiore:

Thank you for bringing this bill forth. Over the past few years, have we had an incident of our children trying to run or fight with the officers?

Assemblyman Ohrenschall:

I believe there will be testimony from the staff at the Clark County Department of Juvenile Justice. I will defer to them to answer that.

Assemblywoman Diaz:

Thank you so much for bringing forth this measure. This is my third session, and I recall from my first session talking about shackling of female inmates while they were pregnant. I remember clearly saying we do not need a statute that eliminates that because we can take care of it under regulations, and then later the state was sued because someone had been shackled while giving birth. I think this is the perfect opportunity for us as policymakers to say that we would rather educate our juveniles than incarcerate them. Let it be more of a learning lesson for them instead of telling them they are more of a long-term criminal who will be in our system forever. I just wanted to thank you for making sure everyone is educated and now knows exactly what needs to be done.

Assemblyman Ohrenschall:

The studies of the mental health professionals have shown that there are a lot of collateral consequences. When you are a child, those traumas have much more significant impacts than they do for adults.

Assemblyman Wheeler:

While I am very open to this bill, and I see why you brought it forward, I can see a whole lot of opinions here. You said we were supplied with studies. I see many opinions from very smart people who should know, but there is not one study I have seen.

Assemblyman Ohrenschall:

I thought there were studies submitted. If not, I will be sure to submit them to the Committee.

Assemblyman Gardner:

If this is already the law for adults, why is it not for juveniles? Do you know why the Supreme Court has not already addressed this?

Assemblyman Ohrenschall:

I do not know the answer. You would think that it would have been dealt with by now. I am happy to defer to Professor Roske to see if she knows the answer. I do know that little by little jurisdictions have been trying to deal with it through policies and statutes. Why it has not been addressed I cannot say, but addressing it now will avoid any litigation.

The amendments are not quite ready yet, but I think we are close. I do not believe anyone will be testifying in opposition because we are all working together with the language.

Michael Whelihan, Probation Manager, Department of Juvenile Justice Services, Clark County:

The language for the proposed amendment was started in 2012 between the Public Defender, the District Attorney, the Department of Juvenile Justice Services, the judge, and many local representatives. Since 2012, there has only been one staff injury and one property damage incident in the courtroom. The Department of Juvenile Justice Services understands and supports this amendment. Under this amendment, if there is any concern from the District Attorney, Public Defender, or a private attorney for a youth, they can petition in writing or orally to the judge to make a determination prior to court. We average about 90 youths per day in court in Clark County. About 30 of those youths are from the juvenile detention facility. We have been trying to use our best practices not only with indiscriminate shackling, but also with

bringing our kids into detention. If it is a first or second offense, we normally do not bring kids in shackled. There is a point system that we use which would be based on the charge, defense, priors, et cetera. We are very understanding of youth and have been trying to do better business practices over the last ten years. Our goal is to change their lives in a positive direction and teach them the right ways. We feel this amendment supports that philosophy.

Chairman Hansen:

Of the 90 children you average per day, what percentage gets shackled?

Michael Whelihan:

I would say between 1 and 2 percent. There are not many.

Chairman Hansen:

I assume when you do, it is in the interest of public safety and you have reasonable boundaries of propriety now. This bill will simply set that into statute. Is that correct?

Michael Whelihan:

That is correct. We shifted some of our probation officer staff which created a courtroom officer unit team with a supervisor who reviews. When the youth comes into detention, the lead probation officer makes a determination based on the criteria outlined in this amendment. This amendment reflects our policy. Basically, we review the youth's prior charges, we have a formal meeting with the child, we make a determination of probation, the lead probation officer codes them into our database, and the supervisor reviews it in the morning. To this date, we have no formal complaints from anyone in the courtroom, the families, the community, the judge, or the District Attorney's office. We are pretty confident in the way we are doing business currently. We have maintained control without having to use the leg restraints. We do not use leg irons in the courtroom. If we did use any restraints, it would be waist chains only.

Regan Comis, representing M + R Strategic Services:

Much of my testimony has already been expressed. There are just a few points that I would like to highlight. The shackles can be physically painful as well as psychologically harmful. Ms. Roske has already testified as to how tight and uncomfortable these shackles can be. We have also heard from adolescent development experts as to how harmful it can be psychologically. The language before you does not prohibit the use of shackles. It only makes it necessary in certain circumstances. Finally, to Assemblyman Wheeler, I did provide an excerpt from "Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System" by the MacArthur Foundation ([Exhibit I](#)).

There is additional information on the evidence-based study that I am happy to share with you and the rest of the Committee.

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:

In a moment I will introduce one of our social work interns, and she will give the majority of our testimony. I just wanted to introduce a couple of things into the record. In response to the question about the studies, there was the one that Ms. Comis just referred to ([Exhibit I](#)). Also, if you look at the written testimony from Dr. Bidwell ([Exhibit L](#)), the footnote will reference that what the studies show is the reactivation of trauma actually causes the children to act out. Being in the shackles makes them feel like court is just not being fair to them. If they have Post Traumatic Stress Disorder (PTSD), it can cause them to act out more than if they had been entrusted with the ability to self-regulate. Also, regarding the American Bar Association resolution, I did not print it out because it was 14 pages long. However, I did email it. In that resolution, they note a number of studies which conclude that the overwhelming majority of juveniles in court are actually in there for nonviolent offenses to start with, and further note that it is a question of fairness at trial. The presumption of innocence is somewhat diminished when the youth shows up in shackles. Alina Kilpatrick, Elko Public Defender, wrote a letter ([Exhibit O](#)) which was forwarded because she was not able to be here today. The reason why we want this to become a statewide practice is because her experience in Elko is that the majority of children in court are shackled.

Karla Navarrete, Intern, American Civil Liberties Union:

I will discuss my firsthand experience of watching juveniles become shackled. Last year, as an intern for the Washoe County Public Defender's Office, I had the opportunity to shadow and observe attorneys while at adult and juvenile court. One of my experiences was watching really young kids come into the courtroom. The feeling you get watching young kids in shackles being brought in is quite shocking. You can hear the moms and dads in the background crying and getting emotional. It is a very difficult experience to have even as an observer. I could not imagine what the parents were experiencing seeing their own children in that state. I hope you vote on these amendments because it will allow us to continue the best practices that we are trying to implement here in Nevada.

John T. Jones, representing the Nevada District Attorneys Association:

We are here in support of A.B. 213 with the proposed amendment from Assemblyman Ohrenschall. We would like to thank Assemblyman Ohrenschall and other proponents of the bill for working with us on our concerns. I realize that we are running out of time, but I would like to make a few points.

Shackling does have a role to play. During my time at the Juvenile Division, there were holes put in the wall, and we have had staff injured by kids. I think this bill is a commonsense approach. Quite frankly, it is the approach that both Clark County and Washoe County are currently taking with respect to juveniles and shackling. The two largest counties in the state are already practicing something similar to what this proposed amendment purports to do.

I would like to briefly address two other issues. The first is with respect to nonviolent offenders and jail. Clark County and, I believe Washoe County, has implemented the Judicial Detention Alternative Initiatives (JDAI). It is the goal of that initiative to keep as many nonviolent juveniles out of detention as we can. We look at their background and their priors. It is not our goal to have nonviolent offenders in juvenile detention, especially if we can have alternatives allowing them to be out in the community.

Finally, it was implied earlier that we do not shackle adults. It is true that we do not shackle adults at trial. In other words, when there is a jury present the adult defendant is not shackled. However, for every other stage, including arraignments, the preliminary hearing, the District Court arraignment, and any other hearing there may be on behalf of the defendant, they are shackled. For lack of a better word, that is considered indiscriminate shackling. There is no distinction currently with respect to adults not being shackled and where children are. With that, I will say once again that we are here in support of A.B. 213 with the proposed amendment.

Chairman Hansen:

Is there anyone else who would like to testify on behalf of A.B. 213? [There was no one.] Is there anyone else in opposition or in the neutral position? Seeing none, Mr. Ohrenschall, you may come back up.

Assemblyman Ohrenschall:

Thank you for your generosity, time, and excellent questions. It is important as policymakers to remember that a child is not the same as an adult. When we craft policy, we have to be careful about the long-term effects and take into account that the child's brain is not developed like an adults. This bill goes a long way toward crafting that careful policy that protects children. Even children accused of breaking the law are children for whom we need to follow the model of juvenile court by trying to get them programs and services. We do not want to traumatize them. I thank you for considering this bill. I will continue to work with all of the stakeholders.

Chairman Hansen:

We will close the hearing on Assembly Bill 213 at this time. We will open the hearing on Assembly Bill 223.

Assembly Bill 223: Revises provisions governing certain crimes against older persons and vulnerable persons. (BDR 15-566)

Assemblyman P.K. O'Neill, Assembly District No. 40:

I am here today to present to you Assembly Bill 223, which is a bill designed to clarify existing law relating to elder abuse for both law enforcement, the courts, and the public as a whole by better defining the elements of each crime associated with our elderly population. According to the U.S. Census Bureau, Nevada's estimated 2013 population is approximately 2.8 million people. Approximately 13 percent, or 366,000, are over 65 years of age. The latest FBI uniform crime report of 2013 indicated there were over 6,500 crimes committed against the elderly in Nevada. I would like to introduce Sally Ramm. She is an Elder Rights Attorney with the Aging and Disability Services Division, Department of Health and Human Services. She will take us through this 53-page bill. However, it is only the first 17 pages that deal with the primary changes related to A.B. 223. She will also discuss the friendly amendments from the various prosecutors and discussions we have had with public defenders. The remaining 36 pages are just dealing with adding the word "abandonment" within the applicable statutes.

Sally Ramm, Elder Rights Attorney, Aging and Disability Services Division, Department of Health and Human Services:

This bill addresses the current statutes. It does not expand them any but simply clarifies them. Older and vulnerable persons can be abused or neglected in their own homes, in facilities, or in public. They can be abused and neglected without having broken bones and bruises. They can be abandoned in an unsafe place which is a form of abuse and neglect. Sexual abuse is also described in this bill to point out that it can happen to older and vulnerable people. The bill, as amended, includes the language "Permitting or allowing the abandonment of an older person or a vulnerable person." This adds it as an element of the crime. I will go over both the original bill and the amendments ([Exhibit P](#)) today. It has always been in the penalty language, but this makes it more clear to the public and to law enforcement. It can be a crime to permit or allow an older person or a vulnerable person to be hurt or neglected. With the elements of the crimes more evident, prosecution of these crimes could become more frequent.

I will direct your attention to section 3 of the bill. This section adds the term "abandonment" to the bill. This would refer to the desertion of an older person in an unsafe manner or the withdrawal of necessary assistance for the older

person. The language about permitting or allowing will not be added to this part on the advice of some public defenders because it may be too broad for the term abandonment. The fear was it might possibly apply in terms where people did not willfully abandon someone. Although it is showing on the proposed amendment, it is going to be taken out.

Section 3, subsection 2(c) includes "Infliction of psychological or emotional anguish, pain or distress on an older person or a vulnerable person...." The amendment ([Exhibit P](#)) will take out the terms humiliating, embarrassing, and trivializing because the district attorneys felt that those terms were too broad to be in the law. However, we added "permitting or allowing the abuse of an older person or a vulnerable person" as part of the elements of that crime. Also the amendment removes the term negligence because the district attorneys in Reno made it clear to us that it is not a good term for criminal law. Therefore, throughout the bill we are taking out "willfully" and "negligently."

In section 3, subsection 4(a) and 4(c), we are adding "Permitting or allowing the isolation of an older person or a vulnerable person." The amendment will also delete "willful or negligent" from subsection 5.

In section 7, subsection 5, we are going to add "and identifying information" after the name of the person who makes the report. This would be identifying information such as residence address, occupation, or something that is in the elder abuse report which will help to identify the person making the report.

Assemblyman O'Neill:

I would also like to point out that the amendments ([Exhibit P](#)) can be found on the Nevada Electronic Legislative Information System (NELIS).

Chairman Hansen:

Would you like us to take a quick recess while you pull everything together?

Sally Ramm:

Yes, that would be fine.

Chairman Hansen:

We will take a one minute recess [at 9:07 a.m.].

Chairman Hansen:

We will now reconvene the meeting [at 9:09 a.m.]. Please proceed, Mrs. Ramm.

Sally Ramm:

In section 4 on page 6 of the bill, we deleted "The county's office for protective services, if one exists in the county where the suspected action occurred; or" because there is no longer a county office for protective services in this state. The last one was in Las Vegas, and it is not a mandated service.

In section 3, we removed "An older person or a vulnerable person to provide for his or her own needs because of an inability to do so." This language was in the criminal part of the law. However, self-neglect is not a criminal act. Therefore, the bill moves it outside the criminal activity and into the protective services part of the bill.

Moving ahead to section 14 is where the bill changed a lot of the penalties to include negligence and willful conduct. On the advice of the district attorneys, what the amendment does is to return that section back to the way it was originally. Once again, including negligence is not a good idea for criminal law.

Those are the primary changes made by the bill and the amendments. Some of those amendments are not shown, but we will do another friendly amendment to include the public defender's amendments.

Chairman Hansen:

We have a question about section 14.

Assemblyman Thompson:

So that we are clear, are you on page 15, section 14?

Sally Ramm:

It is starting on page 15 through page 17.

Assemblyman Thompson:

On page 15, line 34, the language will now be for a misdemeanor because you said that negligence offense was recommended to be taken out of that section.

Sally Ramm:

That is correct.

Assemblyman Thompson:

Therefore, anywhere it says negligent offense is going to be taken out.

Sally Ramm:

That is correct.

Assemblyman Nelson:

I would like to state for the record that I received an email from a lady by the name of Sheila Freed ([Exhibit Q](#)). We receive hundreds of emails every day, but I would like to let the Committee know that I forwarded this email a few minutes ago. I would like to ask you about what this person says in her email. She said that sometimes mentally ill people, or people who are on medication, will stop taking their medications of their own accord and will become destructive to themselves or their caregivers. She further stated that sometimes abandoning them is the only recourse. Her concern was criminalizing the actions of family members or guardians who are simply at their wit's end because sometimes walking away is the only thing left to do. I am curious what your opinion on this is. I would be happy to send you a copy of the email if you would like to see it.

Sally Ramm:

I think that is a tragic situation. I know that it happens. That is part of the problem with being a 24/7 caregiver. There are alternatives to just leaving someone on the sidewalk in front of the hospital, or leaving them in a casino and walking away from them with a literal or figurative note pinned to his or her collar. That type of scenario is the abandonment that this is addressing. I understand that people get to their wit's end, but there are alternatives.

Chairman Hansen:

Before we move forward, I would like the questions to be directed to the sections that we are addressing. If we want to talk in a broader context, we can wait until after we get through all of the sections of the bill.

Sally Ramm:

Section 14 is the last one we will be addressing this morning because the rest of them are just including the abandonment in the other statutes.

Assemblyman Elliot T. Anderson:

I have one technical question and one that is a little broader. I would like to ask about line 5, on page 6. I am worried about the technical change making neglect a willful act. That fundamentally changes what it means to neglect or show negligence. To me, something willful is of a different character that probably should be punished harsher than neglect. Am I missing something, or was that amended out?

Sally Ramm:

We amended that out.

Assemblyman Elliot T. Anderson:

My broader question is about the abandonment issue. I am wondering when does someone have a duty that they cannot get away from? In other words, can you provide some situations where it would be considered abandonment?

Sally Ramm:

In the statute, a duty is created contractually or by taking on the responsibility of caring for someone, which is not quite as defined as a contract would be. However, it is usually somebody that has been caring for someone else for quite some time and taking on duties to allow the person to depend on them.

Assemblyman Elliot T. Anderson:

Does every child have a duty to take care of his or her parent? I think that is probably the right thing to do, but what about legally under the provisions of this bill?

Sally Ramm:

No. As a matter of fact, children do not have a legal responsibility to take care of their parents unless there are certain circumstances. For instance, if a child moves into the home of the parent and is supported by the parent in return for taking care of the parent, that creates a legal duty. If the child takes the parent out of a facility in order to care for the parent in his or her own home, that creates a legal duty. There are a lot of things that would create a legal duty, but there is no blanket legal responsibility for a child to take care of a parent.

Assemblyman Araujo:

Let us say there is a scenario of someone suffering from dementia, and it has not yet been diagnosed. Now, there is an incident where the person wanders off. Are the people who were caring for this individual going to be brought forth for abandonment? What is the legal process?

Sally Ramm:

Someone would have to be caring for the person and then actively stop caring for the person. As in every area of the law, there are gray areas. There is a discretionary area to be determined for a person who consistently leaves the person he or she is caring for home alone, knowing they wander. There is a legal responsibility. If a caregiver is asleep, and the person wanders off in the middle of the night, that is not considered abandonment. According to the bill, abandonment is desertion of an older person or a vulnerable person by a caretaker or other person with a duty of care. I think that the wandering situation would not fall into desertion. However, withdrawal of necessary assistance would probably fall under the neglect part of the law. It really is the desertion of an older or vulnerable person in an unsafe manner.

Chairman Hansen:

Is there anyone here to testify in favor of A.B. 223?

Kristin Erickson, representing Nevada District Attorneys Association:

First, I would like to thank Assemblyman O'Neill and Sally Ramm for bringing this very important bill forward. Unfortunately, our aging population is increasing and along with that crime is also increasing against that particular population. It is becoming more and more common. This bill gives the prosecutor more tools and makes it more effective in protecting our senior citizen community. We have worked very closely with Ms. Ramm, the prosecutors, the District Attorneys Association, and the public defenders to bring forth a bill we can all live with. We urge your support.

Jacob R. Harmon, Regional Director– Northern Nevada, Alzheimer's Association:

I am here in support of A.B. 223. There are nearly 40,000 Nevadans currently living with Alzheimer's disease or a related dementia. Due to the progressive nature of the disease, which results in a decline of cognitive functioning, these persons are especially vulnerable to elder abuse including, but not limited to, isolation, abandonment, physical and emotional abuse, and particularly financial exploitation. This can happen by strangers or by close family members. Assembly Bill 223 strengthens the elder abuse statutes and makes a significant positive impact in the lives of Nevadans living with Alzheimer's along with their caregivers. It provides law enforcement and district attorneys across the state a stronger foundation with which to move forward on these difficult cases. I urge you to pass A.B. 223.

I would also like to introduce my friend, Michel Overton, who is a family caregiver of a person with Alzheimer's disease and dementia. She can speak of her personal experiences with these issues.

Michel Overton, Private Citizen, Sparks, Nevada:

I live in Sparks, Nevada. I am an assistant facilitator for an Alzheimer's Association support group for children and spouses of people with Alzheimer's disease. My mother was diagnosed with Alzheimer's disease approximately eight years ago. I am here today because my mom is a victim of financial elder abuse by a family member that she trusted. My brother handled my mom's financial assets for over seven and a half years. During that time, he stole over \$100,000 which will never be recovered. Currently, my husband and I help to financially support my mom with her basic necessities. My mom suffered daily mental anguish caused by the worry of her finances and not wanting to be a burden. This was in addition to dealing with her mental decline due to her disease. My mom currently owes thousands of dollars for legal and medical costs, some of which have been turned over to collections. I urge you

to support A.B. 223 which will help this devastating issue from happening to anyone else.

Chairman Hansen:

Is there a gap in the law with the situation you described with your brother? Were they unable to prosecute him, and will this bill fill that gap?

Michel Overton:

I am hoping that it would. Actually, there is another bill that will require monitoring of people that are caring for families' resources. If that had happened, it would have been caught sooner. We attempted numerous times to get my brother to produce documentation of my mom's financial situation. He would never produce it. There was no form that we knew of to force him to do that. The other bill I spoke of will assist in that manner.

Jacob R. Harmon:

I believe that Michel's situation is challenging and relates directly to this bill because her brother was charged legally with managing the care for her parents. After bleeding the parents dry financially, he abandoned the parents to the sole care of Michel and her husband. Now it is their responsibility entirely to provide care or no one would be. I believe that is why Michel's testimony is so pressing to this issue at hand.

**Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

We are here today in support of the bill with the proposed amendments from the District Attorney's Office. Our Crimes Against Youth and Families Bureau investigates allegations of abuse or neglect of the elderly. I do believe this helps clarify the law in regards to abandonment.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We would like to echo our support for this bill with the amendments.

Ernest E. Adler, Private Citizen, Carson City, Nevada:

I am representing myself today. I was not going to testify, but I have an example of what can happen in these situations. I had a client who was a long-term state employee. She developed dementia after she retired. Her niece took over her estate in terms of managing her finances and taking care of her from day to day. What eventually happened is the niece gambled all of her client's money away and left her in the house without care. She went for two days without food or water until a neighbor came by and rescued her. That is an example of a case that was not prosecuted. To make things worse, I ended up handling the probate estate after my client died a year later and her

niece inherited from her will, even after stealing the money and leaving her to die. This is a very serious situation.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:
We are expressing our support for A.B. 223.

Barry Gold, Director of Government Relations, AARP of Nevada:

I have submitted my written testimony ([Exhibit R](#)). I would like to just highlight a couple of things from there. Elder abuse is a hidden phenomenon that affects Americans without regard to race, religion, or income. There are situations that do not fit the definitions even if it is clear what had occurred. It can be physical, financial, or psychological. Prosecuting is difficult for a number of reasons. They may be unable or unwilling to testify as a result of incapacity, fear, shame, misguided loyalty, or law enforcement staff not having the ability to enforce this. The laws may be vague or have loopholes. This bill clarifies the elements of abuse, neglect, or isolation for the benefit of law enforcement and the public. It also adds the horrific situation of abandonment.

I would like to discuss abandonment. You have asked questions about it and Mr. Adler provided a very good example. I think that is what the bill is addressing. Let us say someone is taking care of a friend, relative, or parent who may be unable to get out of bed, feed, or provide for themselves. The person who may be providing that care just picks up and goes on vacation using the person's money that they are caring for to fund the vacation. That is the kind of abandonment situations we are talking about, and not when a family squabbles and the person they are taking care of asks to be left alone. There are a lot of extreme circumstances. I can understand, as described earlier, when a person says that they just cannot do it anymore. However, many times they are helping someone who really can provide some of the things for themselves. Abandonment can mean something very different. The changes in this bill should result in an increase in reports of elder abuse and the ability to prosecute these abusers. We must be careful to ensure that our parents, grandparents, and all those who find themselves subject to this intolerable criminal behavior, are protected. They say a society is judged by how we treat our elders. On behalf of the 314,000 AARP members across the state, we strongly urge the Committee to pass A.B. 223 to strengthen our laws against elder abuse.

Chairman Hansen:

In the scenario that you just described, is it your testimony that under current law in Nevada, there is no way to prosecute those people? If so, would this bill fill that loophole?

Barry Gold:

I am not an expert on prosecution. You can say there certainly was financial exploitation. With regard to taking off and leaving them, since there is nothing in statute for abandonment, it would have to be addressed as neglect. That may be more difficult to prove. The idea of "willful" is a higher standard, which is also often difficult to prove. The fact that it happened, law enforcement can act on it and can prosecute someone. I cannot directly answer that question as to whether they can or cannot. The financial exploitation would be clear, but with regard to just leaving for a day or two, I think it may be okay to leave your cat for a few days, but it certainly is not okay to leave your mom who is stuck in bed.

Rana Goodman, representing *The Vegas Voice* PAC:

There are a couple of things that I would like to say. I am very much in support of this bill, but there are a few things not mentioned in the bill that may need some tweaking. You refer to this as a misdemeanor. I think there are several things in there that would fall beyond being a misdemeanor. Many times, the exploitation is by guardians. Many of these seniors fall into what we call the guardian trap. When complaints are made about the guardians abandoning or exploiting the seniors that are in their care, it is always referred back to the guardians. The police are hesitant to make a report or complaint, if the guardian is in care. I am relieved to see the police department backing this bill. Perhaps things might change for the better since the police department is backing it. I am very concerned that it is being looked at as a misdemeanor and not a felony.

One of the Committee members asked if a child is responsible to care for the parent. I would like to flip that around the other way. The parent is responsible to take care of the child. When the parent then becomes the senior, the child should be responsible to take care of the parent. When my parents went into their declining years, I sold my business and spent the last years they had taking care of them. I felt it was my duty, and I did it with love. It was the hardest thing I ever had to do in my life. It was my duty because they took care of me as a child so I took care of them. One of the hardest things that many of us will ever do in our lives is to take care of senior parents. You do what you have to do. I thank God now, having dealt with families that have parents in guardianship, that my parents never fell into that trap. I was lucky enough to have been able to take care of them.

Some of the most exploited people I know are people who are bound to guardianship. I met with Sally Ramm recently and we discussed it in length. I really think that a lot of this law falls into what guardians are doing to seniors. I hope you will take that into consideration.

Assemblyman Elliot T. Anderson:

I just want to clarify the record. I think that every child has a moral obligation to take care of his or her family and parents. Whether it is a legal duty is a different question. I want the record to be very clear on that because if this bill is enacted, we need to make that record clear.

Julie Belshe, Private Citizen, Las Vegas, Nevada:

I am writing this note regarding A.B. 223 as my family are survivors of legal guardianship for both of my parents. I have a vested and personal interest in this particular Assembly bill since both of my parents are currently victims under the system in place. It is my opinion that from the legal guardian to the family court judges, there is a willful neglect and financial exploitation by legal and judicial professionals, officials, and professionals who are using intimidation while plaguing my parents and family from August 2013 until now. [Continued reading from prepared statement, ([Exhibit S](#)).] In closing, family should always be first.

Assemblyman Elliot T. Anderson:

I want to suggest that you speak to the Legal Aid Center of Southern Nevada. There are pro bono services available. There is also the Elder Law Project. If you have any questions on getting hold of them, please contact my office. I certainly want you to feel as though you have been treated fairly by the justice system.

Assemblyman Ohrenschall:

The previous speaker talked about issues with private guardians. I just wonder, were your parents a ward of a private guardian or one of the public guardians?

Julie Belshe:

Originally, the public guardian chose a private guardian. Nobody was notified.

Chairman Hansen:

We are sympathetic. I am sorry, but we do have to stick with the context of the bill.

Elizabeth Diana Indig, Private Citizen, Las Vegas, Nevada:

I am the only child of my parents, Avram and Elizabeth Indig. We were victims of a private, professional guardian. In May of 2012, my mom was in the hospital. A few weeks later, a woman phoned to tell me she was an officer of the court and has had guardianship over my mom. She said she was coming to pick up the keys to my mom's home. I was told that if I interfered, she would see to it that I would rot in prison. I told her the home was in trust, but she repeatedly told me to shut up. Since I was not served the filings, I had no idea

what was going on and she wrote lies in the filings to get the guardianship. [Continued reading from prepared statement, [Exhibit T](#)).]

I am here today because I do not want there to be any more victims such as my mom and myself. If something is not done, more Nevadans will become victims of these heinous crimes. Thank you for giving me the opportunity to speak.

Chairman Hansen:

We are not talking about private guardianships at this point. The Legal Aid Center of Southern Nevada is available to help you with this situation. Honestly, this is not relevant to the bill we are addressing at this time. Please come to a close and submit your written testimony for the record.

Elizabeth Diana Indig:

I think there needs to be oversight on guardians because there is a lot of guardian abuse.

Chairman Hansen:

I appreciate that, and I believe there are some bills addressing that issue. Keep your eyes on what is happening here at the Legislature. Hopefully, we can provide you with some assistance in these matters.

Thomas Lenner, Private Citizen, Las Vegas, Nevada:

I am a veteran and I have been here since 1974. I have never experienced anything like this in my whole life. I will give you a brief synopsis of what is going on, but the entire report is with the Attorney General. Basically, I have been a caregiver for my mother-in-law for over two years. I have been married 20 years. Prior to that I was a caregiver for my wife's father. He is a veteran of the Korean War. We have power of attorney for my mother-in-law's care and for her estate, which is in my daughter's name. My daughter could not make it because she has to work. On November 19, 2014, we went before Commissioner Jon Norheim who ignored our power of attorney documents. On March 4, 2015, I went in with my mother-in-law, daughter, and our attorney. Our attorney made us wait out in the lobby for two hours while she went into the courtroom. Finally, we went in. Because my mother-in-law received a good mental score from a neurologist, she was able to speak for herself, but Commissioner Norheim denied her from speaking. He also ignored all of the documents.

Chairman Hansen:

Mr. Lenner, I am sorry to interrupt. This frankly is not directly relevant to the bill. Do you have something to talk about in relation to A.B. 223?

Thomas Lenner:

Section 3, subsection 2(c) states "Infliction of psychological or emotional anguish, pain or distress on an older person or a vulnerable person through any act, including, without limitation: (1) Threatening, humiliating, embarrassing, controlling or socially isolating the older person or vulnerable person;" These are the stages we are in. We are being proactive in avoiding all of this. These are pertinent to our family. Being a caregiver is a very tough thing to do. I do not know if you have ever done that. My wife is handicapped and agoraphobic. She is now on double medication. My daughter has been to the hospital over the stress and our civil rights have been violated. The report is with the Attorney General.

Chairman Hansen:

Mr. Lenner, before you leave the table, I am going to have Mr. Anderson repeat the advice he provided earlier. I would strongly urge you to seek assistance.

Assemblyman Elliot T. Anderson:

We have several resources for this sort of situation. There is the Senior Law Project in Las Vegas. I would suggest you Google them. You can also speak with the Legal Aid Center of Southern Nevada located at 725 East Charleston Boulevard in Las Vegas. I had the privilege of working there for a year and a half as a clerk. There are some excellent lawyers that are very committed to helping people in situations like we have heard today. Also available is the Civil Law Self-Help Center that can help at family court and at the district and justice courts. Between all of these resources, I am confident that you can get pointed in the right direction to at least see if you have a colorable claim for any wrongdoing. I would suggest to anyone that has these problems in Las Vegas to check in with them.

Thomas Lenner:

Unfortunately, the attorneys are all guiding us towards guardianship which we have no interest in. We have executed powers of attorney in place. As you know, guardianship, in many cases, takes all of the ward's money. We are not interested in guardianship.

Chairman Hansen:

Thank you, Mr. Lenner. Hopefully, we can get some help for you. Is there anyone else in Las Vegas with issues specifically germane to A.B. 223? Seeing none, is there anyone else in favor here in Carson City? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone here in Carson City or Las Vegas in the neutral position? Seeing no one, would you like to wrap it up, Assemblyman O'Neill?

Assemblyman O'Neill:

I think some of the issues that the last two speakers discussed are addressed in other bills. I just want to thank you all for the time and consideration you have given us. I think it has been clearly presented that there is a need for these changes. I look forward to working with you to get this passed.

Chairman Hansen:

We will now close the hearing on Assembly Bill 223. We will now open the hearing on Assembly Bill 224.

**Assembly Bill 224: Revises provisions governing records of criminal history.
(BDR 14-977)**

Assemblyman P.K. O'Neill, Assembly District No. 40:

I am here today to present to you Assembly Bill 224, which will assist law enforcement and criminal justice agencies by using biometrics in the identification of individuals. Julie Butler from the Department of Public Safety is here to assist us to understand the bill.

Julie Butler, Division Administrator, General Services Division, Department of Public Safety:

As you know, the General Services Division maintains the Nevada Criminal History Repository which retains statewide records of arrests and dispositions. I requested that Assemblyman O'Neill bring forth this bill on behalf of the Criminal History Repository and law enforcement as a housekeeping measure to allow Nevada to keep up with evolving technology for the accurate identification of people.

There is a proposed amendment ([Exhibit U](#)) to Assembly Bill 224 which will amend *Nevada Revised Statutes* (NRS) 179A.075 to authorize the Division to submit to the FBI one or more of a person's fingerprints for the purposes of mobile identification, a complete set of fingerprints for criminal arrest booking purposes, or other biometric identifier of the person. Other biometric identifier is further defined in section 1, subsection 8 of the bill to include one or more fingerprints; one or more palm prints; one or more scars, marks or tattoos; voiceprint; facial image; retina image; and iris image of person. [Continued reading from prepared statement ([Exhibit V](#)). Also discussed in testimony were: Details of the Next Generation Identification (NGI) Program ([Exhibit W](#)), Repository for Individuals of Special Concern (RISC) Projections ([Exhibit X](#)), RISC handout ([Exhibit Y](#)) and Virginia Beach Murder, A RISC response with photo success story ([Exhibit Z](#)).]

Assemblyman Ohrenschall:

This brings back memories of applying for bar exams and having to get my fingerprints to submit with the application. I remember that they needed the full set. If we are getting rid of that requirement, is there more of a danger of misidentification? If we do not have the full set, would "Bob Smith" come back as "Mary Jones," causing an error in a prosecution?

Julie Butler:

We are talking about two different things. What you were talking about was for an applicant submission for an occupational licensing purpose. Those do require a full set of prints. What we are talking about here is for criminal booking purposes and for field identification. If the cop on the street is using this device, it will help with identifying purposes because people do not always provide the right name. It is not intended to take the place of the full ten fingerprints. It gives them a heads up on the person because they might not be dealing with who they think they are dealing with.

Assemblyman Ohrenschall:

You do not think there would be any more danger of misidentification?

Julie Butler:

I do not think there will. That is the advantage of a biometric because it is unique to that individual. That is the whole reason why we are proponents of biometric identification (ID).

Chairman Hansen:

I have to wonder if we are reaching the big brother stage where a cop pulls me over and he can identify who I am through my fingertip. What about your protection from unreasonable searches and seizures? Obviously, I want to help the officers, but I am playing devil's advocate here. Are there any concerns along those lines?

Julie Butler:

Possibly, yes. I think this kind of stuff makes people nervous. The program at the FBI level has been vetted by their legal counsel. They worked together with privacy advocates. The technologies are noninvasive, unlike DNA. We are not poking you, prodding you, extracting anything from you. It is simply based upon photographs and fingerprints, which have long been a staple of criminal identification since the establishment of the FBI in the 1930s. This is just the next evolution of accurately identifying people. It is not only for criminals. When you uncover a deceased person and you do not know who they are, the fingerprints, scars, marks, and tattoos provide yet another tool for examinations to identify who these people are.

Chairman Hansen:

The first successful fingerprint prosecution took place in Jarbidge, Nevada, in approximately 1915.

Assemblywoman Diaz:

Which biometric identifiers are currently being used most in Nevada? You mentioned that if we actualize our statute, there might be an appetite to expand on the use of some of this biometric information. Who stores this data or identifiers, and how do we ensure that it is kept safe?

Julie Butler:

The full set of fingerprints are currently being used. We are trying to move toward the mobile ID in the immediate future. There are at least a couple of law enforcement agencies that would like to move forward with the mobile ID. We do get palm prints as part of the sex offender registrations now. We do not currently have the capability to utilize facial recognition. That would be a future capability. Iris recognition is currently being piloted by the FBI and several correctional facilities around the country. I do not know of anyone currently using voiceprint, although it has been in our statute for a very long time. Retina scans have been in our statutes for a very long time, although to my knowledge they are not being used. That is a snapshot of where we are going.

The General Services Division stores the data. It is also stored by the Criminal History Records Repository at the FBI where it is called the Interstate Identification Index. There are a number of safeguards that we are required to keep in place to govern personnel security. That is why we have very stringent background checks on who can even work around this data. We have technical security people who make sure the electronic connections between the systems are safe and secure. We have secure buildings so the access is very tightly controlled. Agencies keep a log of who the information is released to and for what purposes. We are audited every three years by the FBI. We go out and audit Nevada criminal justice agencies to ensure there are no misuses of the systems. There is a very extensive network of protections.

Assemblywoman Diaz:

In your scope of working with the Department, have there ever been any breaches in security? We keep hearing about recent hacks into many different databases. Do you know of any attempts?

Julie Butler:

I am not aware of any. According to our information technology services, there are daily attempts against all state data. People try to get in there through various ways. We have been successful so far in blocking those attempts.

Anything is possible. I cannot sit here and say we would never ever have a data breach. Also, with the systems and technology we have in place, we have been able to keep ahead of the people who would attempt to do us harm.

Joseph Chronister, Chief of Police, City of North Las Vegas Police Department:

First, I would like to say that Ms. Butler did a fantastic job. We are here in support of this bill. Over the last several years, the City of North Las Vegas, and law enforcement in general, have taken a number of measures to use this technology to advance our capabilities in providing services to the communities we serve every day. We do it by electronic police reporting, electronic citations, as well as electronic accident investigation reporting. It is much easier and a much more efficient use of time and effort for our officers. It is important to note that this is something that the City of North Las Vegas has been working on for the last five years. It is truly a technological process that we believe would be an efficient use of time and opportunity. It would ensure that those folks that we encounter are who we believe they are so that we do not have a mistake of misidentification. It is not uncommon for people to not carry identification. Sometimes people will provide the wrong name. We do not want to hold those people any longer than we have to. I brought with me our systems analyst, Carla Stone, who can answer any technical questions. Indeed, we are in support of A.B. 224.

Carla Stone, Police Support System Supervisor, City of North Las Vegas Police Department:

We have shadowed this technology for five years. What I mean by that is we have met with law enforcement agencies who use this actual technology in-house. The technology is not new. Biometric technology is an extension of the existing systems we have currently. It is a method of defining a person's characteristics as Ms. Butler noted. I might add that the technology does not only serve as purpose for law enforcement. If we were to access civil records, it would help to locate the mentally ill or the elderly. As an example, in Colorado there was a plane crash in which everyone was deceased. They were able to identify each one and get ahold of family members quickly. In another example, it was used to aid a victim of a homicide who had no criminal history. The biometric system is just another tool but is pretty frightening to some. It will be utilized just as we are doing today. The difference is that it will be a two-finger fingerprint. I have spoken with the FBI on the validity of the two-finger print compared to the ten-finger print, and they have had no issues. The RISC database that Ms. Butler spoke of contains wanted persons and terrorist information. Las Vegas has 40 million visitors yearly. We believe this will assist law enforcement with that particular instance. The technology does a lot more than just provide law enforcement tools for criminality.

I wanted to provide an example on civil records. There was a homicide in West Virginia. The victim was identified quickly and the perpetrator was arrested. This is not new technology but it is new to Nevada. In closing, I would be willing to answer any of your questions. We have invested four to five years in this, meeting with information technology professionals, and working with the FBI Criminal Justice Information Services. The Privacy Impact Assessment of 2011 by the FBI and the Department of Homeland Security was about this process of using biometrics. It is established, proven, and we believe it opens the door for law enforcement to serve the public better.

**Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

We are here in support of A.B. 224. We believe it allows us to keep up with modern technology, and it makes officers' jobs easier. We have a project management unit that is always looking at new technology, whether it is camera equipment or equipment of this type. As part of what they do, best practices are examined for developing policies and procedures, which I believe would address some of the concerns raised today regarding intrusion and privacy.

It is not my vision that this would be used for every person stopped in a car. I will give you an example of where it would be used. It is not uncommon for someone to call the police and say the person that assaulted her four or five years ago is now in the grocery store, and that she knows it is him, and he has a warrant for his arrest in Kansas for what he did. The officer shows up at the grocery store and the guy said it was not him and that he had never seen the woman in his life. In fact, he presented an ID card to show who he was. In some cases, it is difficult to determine who is telling the truth and who is not. Technology of this sort would allow us to very easily make the determination in a manner of seconds and even clear someone who is wrongly accused. We support this bill and hope the Committee will give us the ability to use this modern technology.

Assemblyman Elliot T. Anderson:

Just to clarify, this bill does not get into when it can be used, right? We are not saying that this can be used at a traffic stop. That is probably some other Fourth Amendment issue which would be beyond the scope of this, correct? We are just talking about allowing the repository to accept the information.

Chuck Callaway:

That is correct. The way I read this legislation is that it is allowing us to use the technology. As you stated, case law tends to work out a lot of these issues. If someone believes they were forced to touch the machine to provide

the personal information and there was no valid reason for it, things usually tend to work out. Search and seizure law throughout the years has become very clear on when law enforcement can and cannot do things. I think this would fall into that same category.

Assemblyman Elliot T. Anderson:

This bill does not authorize anyone to take any additional fingerprints except at arrests, correct?

Chuck Callaway:

That is correct. This bill just lets us use the new technology. It does not say how, when, or where. It just gives us the ability.

Assemblyman Ohrenschall:

On page 5 of the bill, section 1, subsection 8(a), biometric identifier is listed as a fingerprint, voiceprint, facial image, retina image, or iris image of a person. I am wondering, will the departments need to get facial recognition software, or do they already use it?

Chuck Callaway:

The way I envision this is similar to what we did with body cameras. We would put together a working group to test different types of equipment. Sometimes there are vendors that claim their equipment works in a certain way, but then we come to find out that it does not. Or, they may say it can do X but it really does Y. We want to make sure we test and use the equipment first. Before we would implement any of this technology, we would thoroughly research it to determine that it is cost-effective and that it does what the vendor says it will do. Down the road, we will look at how we will pay for it and if it will actually save us money. Sometimes the use of modern technology saves us money because if an officer spends two hours in the field trying to identify someone while he could have been responding to other calls for service, how is his time being effectively used? We could save resources and manpower by using this equipment.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:

We are here in support of A.B. 224. I would like to thank Assemblyman O'Neill for bringing it forward. There is a provision in NRS for law enforcement to obtain not less than one fingerprint. However, in this bill and in NRS 179A.075, for us to submit that, the repository requires the complete set of prints. We are in the business of trying to settle things, especially at the street level. If we can grab a couple of fingerprints to get a positive identification on a person, it may mean the difference between issuing them a citation and helping him out down the road versus making an arrest and taking him to jail. It is just food for

thought. With individual contact with a person, this can help us assist the people we serve.

Kirstin Erickson, representing Nevada District Attorneys Association:

We believe it is important to keep up with the latest in technology, and we support this bill.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We also support this bill, and we look forward to utilizing this technology.

Carla Stone:

If this bill is approved, we will be focused on fingerprinting in the field. I know that facial imaging and iris imaging are available, but in North Las Vegas we have a large repository of prints to work from. We will be seeking funding from grants to implement the testing. We will also allow other agencies to come on board with this. They will be utilizing our server, and our technology, should they want to. Our goal is to make this a state initiative driven by law enforcement. As Mr. Callaway said, it gives us the authority to move forward.

Chairman Hansen:

Is there anyone else to testify in favor at this time? [There was no one.]
Is there anyone in opposition to A.B. 224?

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:

I am here in opposition to the language regarding facial recognition, iris and eye recognition, and voiceprint recognition. There is a lot of data stored in all of that. This is technology that we are just beginning to understand. I will give you some examples of what you can tell by reading someone's iris. You can tell about cognitive disorders like autism, dyslexia, attention deficit disorder, and speech disorders. You can tell if someone has used or is on drugs or alcohol. You can determine whether someone has a mental or psychological illness. Some of the repercussions of HIV and AIDS can be read from your iris. You can determine someone's intelligence from the movement of his or her eyeballs. You can even determine someone's sexuality. Our faceprint is basically just as personal as our social security number. That is how guarded it should be. We all have separate facial templates and the Department of Motor Vehicles already collects our facial pictures.

Regarding the voiceprints, there are some major banks, such as Bank of America, who are actually using voiceprint technology. When they say the message will be recorded, they are actually recording it and using technology to determine whether it is your voice when you call. The problem with that

is voiceprint technology has a very high false-positive match rate. We have heard about the data breaches with Target. If Bank of America got hacked and someone had your voiceprint, they could conceivably call Bank of America and drain your bank account with a false recording of your voice.

All of the data that can be collected through A.B. 224 is highly personal and sensitive. We fear that enabling this law without putting the proper protections in place would be a high risk. There was a mention of the FBI privacy impact statements. Those have not all become publicly available. The Electronic Frontier Foundation currently has a Freedom of Information Act (FOIA) request that is being litigated because a lot of information regarding how this technology is being used has not been provided. We know from other sources that the FBI also pulls from social media sites and other recordings. For example, if we have government surveillance of crowds, it can be combined with this database to start matching people that have no sort of criminal arrest record. You can potentially become a suspect just because of this technology.

We need to take the time to establish common ground with all stakeholders, creating an agreement on core principles allowing these technologies to be used in a controlled and responsible way. For that reason, we think those three portions of the bill should be referred for an interim study so that we can really make sure we are putting statewide policies in place to protect all of us and our privacy.

Assemblyman Elliot T. Anderson:

Thank you for your input on this bill. I do not really understand this technology at all. This bill appears to say that you can request it from the FBI. It does not say that we can collect it. Can you tell me how this information is collected? I understand fingerprints, if you are arrested, go into a database. I do not understand how else you would get fingerprints from someone unless they are arrested or apply for a gaming card. However, for all of these other biometric identifiers, how are these collected? Under current case law, I assume it would have to be a search to get such biometric data from people.

Vanessa Spinazola:

I am not sure. In my understanding of this bill, when people are requesting background checks, and they submit fingerprints to the FBI, it is adding this new language into that part of the NRS. This is other information that could be collected by police during stops. However, all of that is not clear in this bill. That is what I am concerned about. I am not sure about how it is collected. The FBI only takes fingerprints right now for a background check. The rest of this is unnecessary in terms of the background check. If you look on their website, the application for a background check only requires fingerprints.

What I am concerned about is because this bill presumes the information will be uploaded to the FBI, we know the FBI pulls out information from social media sites and other government surveillance. People who are not yet accused of crimes will be mixed in this nationwide database. Nevada will have no control over that. For those of you here last session, we talked about DNA and how all those databases are uploaded to the feds. Basically, we have no control over how the feds mix and match up their information or where they gather it from. We can only control Nevada. Once it is uploaded to the feds, you have lost control over it.

Assemblyman Thompson:

With regard to the verbiage on page 5, subsection 8(a), the ACLU is okay with only the fingerprint part. Is that correct?

Vanessa Spinazola:

Correct.

Janine Hansen, representing Nevada Families Association:

We heard a lot of information previously presented by those in favor of the bill that they wanted this in order to have the two-finger capture, or the mobile ID. This bill goes far beyond that capability with many other biometric identifiers. This is of considerable concern to me considering some of the things that have happened recently with the National Security Agency (NSA) and some other organizations.

Let me bring to your attention something that happened in 2009. There was a report issued by Homeland Security in which then-Secretary Janet Napolitano released a very controversial intelligence assessment which lists returning veterans among terrorist risks in the United States. In addition to that, it listed right-wing organizations which may include groups opposed to abortion and immigration as merely one among the several threat assessments for terrorism. In the National Defense Authorization Act, there is now an opportunity to arrest American citizens as terrorists without giving them their constitutional rights of due process, right to trial by jury, and habeas corpus. This is of considerable concern to me.

After 2001, there was a bill presented in the state of Nevada which included the definition of a terrorist from the National Patriot Act. Under that definition, which was rejected by the Committee, it would have identified those who opposed the government, even in a legislative hearing, as being a potential terrorist. The headlines the next day in the newspaper would have said "Janine, the Terrorist." We have to be careful that we do not go beyond the mark. We can limit this bill to the two-finger capture and the mobile ID, and

we should be very careful about what we do upload to the FBI. As many of you know, I was arrested in 2004 for petitioning at the Reno bus depot. I was later exonerated all the way to the Supreme Court. Our information could have been uploaded and taken to the FBI because this does not require anyone to be convicted of anything or even charged with a felony. There are safeguards for those of us that are concerned about the overreaching of the government which we have seen extensively with the NSA and the FBI.

We appreciate the concerns of the police and how they do their job. We also appreciate the concerns for those who may have lost their lives and need to be identified. This bill goes far beyond that and we do not know how it will work, or if it will invade our privacy in those other biometric areas. We have concerns regarding the broad definition available in this bill. We would like it to be restricted to the two-finger print and mobile ID until the time that additional information is available for people to review. Biometric information can be misused or even hacked by other people as has been stated previously by Ms. Spinazola.

Chairman Hansen:

Seeing no questions at this time, is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone in the neutral position? Seeing no one, please come back up, Assemblyman O'Neill.

Assemblyman O'Neill:

With your permission, I will allow Ms. Butler to respond and then I would like to make my closing statement.

Julie Butler:

I do appreciate the concerns that have been brought up in opposition. It is important that we understand what we are trying to do here. The law enforcement community has no interest in trying to identify your medical conditions or your intellectual capacity. This is strictly to identify who you are. It is an investigative lead. It is not to be used as the sole impetus of any action against you. I would be remiss if I did not tell you that when we go to implement some of these provisions, there will have to be statewide policies and procedures put into place to govern when and how they will be used. There would be audit procedures, et cetera. I realize that from your position it sounds like I am saying, "Just trust me, we are going to take care of it." I realize how that can potentially sound. The impetus is to move us along technologically and to get better at accurately identifying people. That helps enforcement officers, but it also helps the ones that are wrongly accused. It can clear up things in an instant with biometric procedures as opposed to

some of these other name-based identifications. I appreciate your consideration and look forward to working with all parties on moving it through.

Assemblyman O'Neill:

I would like to conclude by saying that what we are really trying to do with A.B. 224 is to allow our police to better serve our communities in an efficient, safe manner. Thank you.

Chairman Hansen:

We will close the hearing now on A.B. 224 and open it up to public comment. Is there anyone who would like to say anything for the record? Seeing none, we will close public comment. We have some Committee business. We have one bill draft request (BDR) to introduce.

BDR 41-1072: Revises provisions governing agreements with certain governments for purposes of interactive gaming. (Later introduced as Assembly Bill 414)

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE
BDR 41-1072.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Hansen:

We are going to now hear from the Chairman of our Homeowners Association (HOA) Subcommittee, Assemblywoman Seaman.

Assemblywoman Seaman:

The HOA Subcommittee for Judiciary will be meeting this evening at 6 p.m. in room 3138. In the event that the Committee on Legislative Operations runs late, we will meet upon its adjournment. Please make sure all handouts have been electronically sent to the Committee Manager by noon today. We have scheduled another Subcommittee meeting for next Thursday, March 26, 2015. The bills for that agenda have been posted on NELIS. We may schedule an additional meeting depending on how many bills we need to get through.

Chairman Hansen:

With no further business to discuss, this meeting is adjourned [at 10:38 a.m.].

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Committee on Judiciary</u>			
Date: <u>March 19, 2015</u>		Time of Meeting: <u>8 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 7	C	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 151	D	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 153	E	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 160	F	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 213	G	Regan Comis, M + R Strategic Services	Proposed Amendment
A.B. 213	H	Assemblyman James Ohrenschall	Video Link Kids for Cash
A.B. 213	I	Susan Roske, Office of the Clark County Public Defender	Because Kids are Different Report
A.B. 213	J	Donald Rosenblitt, Lucy Daniels Center, Cary, NC	Written Testimony
A.B. 213	K	Eugene Griffin, Northwestern University Medical School, Chicago, IL	Written Testimony
A.B. 213	L	Robert Bidwell, Burns School of Medicine, Honolulu, HI	Written Testimony
A.B. 213	M	Gwyneth Rost, University of Massachusetts, Amherst	Written Testimony
A.B. 213	N	David Shapiro, Campaign Against Indiscriminate Juvenile Shackling	Written Testimony
A.B. 213	O	Alina Kilpatrick, Elko County Public Defender	Written Testimony

A.B. 223	P	Sally Ramm, Aging and Disability Services Division	Proposed Amendments
A.B. 223	Q	Sheila Freed, Private Citizen, Reno, NV	Written Testimony
A.B. 223	R	Barry Gold, AARP Nevada	Written Testimony
A.B. 223	S	Julie Belshe, Private Citizen, Las Vegas, NV	Written Testimony
A.B. 224	T	Elizabeth Diana Indig, Private Citizen, Las Vegas, Nevada	Written Testimony
A.B. 224	U	Julie Butler, Department of Public Safety	Proposed Amendment
A.B. 224	V	Julie Butler, Department of Public Safety	Written Testimony
A.B. 224	W	Julie Butler, Department of Public Safety	Next Generation Identification
A.B. 224	X	Julie Butler, Department of Public Safety	RISC Projections map
A.B. 224	Y	Julie Butler, Department of Public Safety	RISC Info Sheet
A.B. 224	Z	Julie Butler, Department of Public Safety	RISC Success Story